85. In circumstances of emergency, where the "volunteer" acts for the master upon request, such a volunteer is a servant. *St. Louis, etc., R. Co.* v. *Bagwell,* 33 Okla. 189, 124 Pac. 320, 40 L. R. A. (N. S.) 1180, and note. One who assists because of a legitimate personal interest is not a "volunteer" within any rule which will prevent recovery for injuries caused by negligence of the master's servants. *McIntire Street R. Co.* v. *Bolton,* 43 Ohio St. 224, 54 Am. Rep. 803; *Eason* v. *Sabine, etc., R. Co.,* 65 Tex. 577, 57 Am. Rep. 606.

It is a well settled general rule that no duty exists to trespassers of whose presence the defendant is ignorant or not bound to have knowledge, except to refrain from wantonly or wilfully injuring them. *Zoebisch* v. *Tarbell,* 10 Allen (Mass.) 385, 87 Am. Dec. 660; *Magar* v. *Hammond,* 183 N. Y. 387, 76 N. E. 474, 3 L. R. A. (N. S.) 1038; 29 Cyc. 442. And so it has been held where the defendant's servant contrary to specific orders and without the knowledge of the defendant permitted the plaintiff to ride in the defendant's vehicle, in which the plaintiff was injured by servant's negligence, that there could be no recovery. *Walker* v. *Fuller,* 223 Mass. 566, 112 N. E. 230. This holding was based primarily on the fact that the injured plaintiff was a trespasser for his own sole benefit. This general rule, however, is modified by the long line of cases following Lord Abinger's decision in the famous donkey case (*Davies* v. *Mann,* 10 M. & W. 545) that where the trespasser's peril is perceived, the defendant owes the duty of ordinary care to avoid injuring him, and is liable for negligence in exercising this degree of care. *Isbell* v. *New York, etc., R. Co.,* 27 Conn. 393, 71 Am. Dec. 78; *Evarts* v. *St. Paul, etc., R. Co.,* 56 Minn. 141, 57 N. W. 459, 22 L. R. A. 663, 45 Am. St. Rep. 460. The modification is based upon the duty not to wantonly or wilfully injure a trespasser. The rule of *respondeat superior* applies to such a failure to exercise ordinary care on the part of the defendant's servant, where the servant is at the time of the plaintiff's injury engaged in the master's business within the scope of his employment. *Isbell* v. *New York, etc., R. Co., supra; Evarts* v. *St. Paul, etc., R. Co., supra; Davis* v. *Ohio Banking, etc., Co.,* 127 Ky. 800, 106 S. W. 843, 15 L. R. A. (N. S.) 402.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—INJURIES "ARISING OUT OF" EMPLOYMENT—INJURY BY ASSAULT.—A factory oiler, employed by the defendant, was accused by his foreman of using too much oil, and thereby causing the machines to run defectively. The oiler called his foreman a liar, whereupon the latter struck him in the face, the blow resulting in total loss of vision in one eye. The oiler brought this action under the Workmen's Compensation Act against his employer. *Held,* the oiler is not entitled to relief. *Knocks* v. *Metal Package Corp.,* 185 N. Y. Supp. 309.

By the English Workmen's Compensation Act, and practically all the American statutes on the subject, the employee can recover compensation only for injury "arising out of" and "in course of" the employment. Both terms of this requirement must be satisfied, however, before compensation may be awarded. *Thom* v. *Sinclair,* [1917] A. C. 127, Ann. Cas. 1917D 188; *In re McNicol,* 215 Mass. 497, 102 N. E. 697, L. R.

A. 1916A 306. The words "in the course of" are held to apply to the time, place, and circumstances under which the injury takes place. There is more difficulty in determining whether the injury "arises out of" the employment, that is, in establishing the causal connection between the employment and the injury. *Mueller Construction Co.* v. *Industrial Board of Illinois*, 283 Ill. 148, 118 N. E. 1028.

An injury "arises out of" an employment when it occurs in the course of the employment, and is a natural and necessary incident or consequence of it, though not foreseen or expected. *Larke* v. *John Hancock Mut. Life Ins. Co.*, 90 Conn. 303, 97 Atl. 320, L. R. A. 1916E 584. Only those accidents are embraced which happen to a servant while he is engaged in the discharge of some function or duty which he is authorized to undertake, and which is calculated to further, directly or indirectly, the master's business. The injury must be reasonably incident to the employment. *Fitzgerald* v. *Clarke*, [1908] 2 K. B. 796, 1 B. W. C. C. 197.

"If one employee assaults another employee, solely to gratify his feeling of anger or hatred, the injury results from the voluntary act of the assailant, and cannot be said to arise either directly out of the employment or as an incident of it." *Jacquemin* v. *Turner, etc., Co.*, 92 Conn. 382, 103 Atl. 115, L. R. A. 1918E 496. In the present case not only was the injury caused by the voluntary attack of the assailant, but also, the plaintiff instigated the altercation. The resulting assault, then, proceeded from a risk not originated by or "arising out of" the employment. Morever, in provoking the assault, the plaintiff performed no duty for his master, but, on the contrary, deserted that duty for personal ends, and thereby stepped out of his employment. *Griffin* v. *Roberson*, 162 N. Y. Supp. 313; *Union Sanitary Mfg. Co.* v. *Davis*, 64 Ind. App. 227, 115 N. E. 676.

See L. R. A. 1916A 40, 240, for full discussion of injuries "arising out of and in the course of" employment. See also 3 VA. LAW REV. 232, 6 VA. LAW REV. 67.

MUNICIPAL CORPORATIONS—POLICE POWER—BUILDING LINES.—A State statute gave a city the power to establish building lines within its limits and did not provide for compensation to the owner of property fronting on the streets where such lines were established. The defendants were interested in the development of a certain tract of land in the city and laid out plans and sold lots on newly formed streets without regard to the building lines as established by the city. The city brought suit to restrain them from further opening such streets or selling lots fronting thereon. The defendants claimed that the statute in question was void as providing for the taking of property without due process of law—compensation not being provided for. The city contended that this was a proper exercise of the police power. *Held*, that the defendants be restrained. *Town of Windsor* v. *Whitney* (Conn.), 111 Atl. 354. See NOTES, p. 649.

NUISANCE—INJUNCTION—COTTON GIN.—Plaintiffs acquired homes in that part of a town which was known as the "ginning" section. To the